IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

WP(C).No. 31933 of 2005(B)

OS.145/2001 of PRL.SUB COURT,KOTTAYAM

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PETITIONER:

V.T.THOMAS, AGED 62 YEARS,
S/O.THOMMAN, CHRUMATTATHIL VEEDU,
EDAYIRICKALPPUZHA, KANGAZHA, KOTTAYAM.

BY ADV. SRI.M.J.THOMAS

RESPONDENT:

M/S.GRAND FINANCE AND ESTATES PRIVATE
LTD., REPRESENTED BY ITS MANAGING DIRECTOR,
N.KRISHNANKUTTY PANICKER, S/O.NARAYANA PILLAI,
531/9, SASTHRI ROAD, KOTTAYAM 1.

BY ADV. SRI.MATHEW PHILIP EDAPPALLIL
SRI.G.R.PANICKER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE EXPARTE DECREE DT.31.08.02 IN OS NO.145/01 OF THE PRINCIPAL SUB COURT, KOTTAYAM.

EXT.P2 : TRUE COPY OF THE AFFIDAVIT AND IA NO.2060/05 IN OS NO.145/01.

EXT.P3 : TRUE COPY OF THE APPLICATION FOR CONDONING THE DELAY IN FILING EXT.P2.

EXT.P4 : TRUE COPY OF THE APPLICATION EA NO.370/05 IN EP NO.1/04.

EXT.P5 : TRUE COPY OF THE SALE PROCLAMATION ALONG WITH THE DETAILS OF THE PROPERTIES PROPOSED TO BE SOLD.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 31933 OF 2005

Dated this the 1st day of August, 2007

JUDGMENT

Ext.P5 sale proclamation is under challenge in this Writ Petition under Article 227 initiated by the second judgment debtor. Two contentions are seriously raised by him. First is that the decree passed against him was an ex-parte decree and he filed an application for setting aside the same, along with an application for condonation of delay caused in the matter and they are pending. The second contention is that under Ext.P5, 2.5 lakhs of very valuable property belonging to him is ordered to be sold, while the value of the property is such that it will suffice if a small portion of the same is sold. This Court while admitting this Writ Petition granted stay for one month in respect of the execution proceedings in furtherance to Ext.P5, which has been extended from time to time.

Both sides sought for time. However, considering the grounds raised in the Writ Petition, I am of the view that the Writ Petition itself can be disposed of issuing the following directions:

1. If the application to set aside ex-parte decree and application for condonation of delay caused in the matter are even now pending before the trial court, that court (the Principal Sub Court,

Kottayam) will hear both sides on those applications and dispose of those applications at the earliest and at any rate within two months of receiving copy of this judgment.

2. If it is revealed that those applications have been dismissed, then also the order of stay presently passed will continue for a period of six more months from today. In the meanwhile, it is open to the petitioner to identify a purchaser who will be prepared to purchase whichever portion of the properties in question for a price equivalent to the decree debt. Once such a purchaser is identified, the petitioner will produce the agreement before the court below for permission to have a private sale of a portion of the property to that purchaser. The court below will consider that application, hear both sides and pass appropriate orders and thereby ensure that either the petitioner or the prospective purchaser pays the entire decree debt so that the decree will stand satisfied. At any rate, the order of stay will not continue beyond six months from today.

PIUS C. KURIAKOSE, JUDGE

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